



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R03-OAR-2012-0368; FRL- 9901-41-Region3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; West Virginia's Redesignation Request for the Wheeling, WV-OH 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a redesignation request and State Implementation Plan (SIP) revision submitted by the State of West Virginia. The West Virginia Department of Environmental Protection (WVDEP) requested that the West Virginia portion of the Wheeling, WV-OH fine particulate matter (PM_{2.5}) nonattainment area ("Wheeling Area" or "Area") be redesignated as attainment for the 1997 annual PM_{2.5} national ambient air quality standard (NAAQS). In this rulemaking action, EPA is approving the 1997 annual PM_{2.5} redesignation request for the West Virginia portion of the Area. EPA is also approving the maintenance plan SIP revision that the State submitted in conjunction with its redesignation request. The maintenance plan provides for continued attainment of the 1997 annual PM_{2.5} NAAQS for 10 years after redesignation of the West Virginia portion of the Area. The maintenance plan includes a comprehensive emissions inventory that EPA is approving in this rulemaking. The maintenance plan also includes an insignificance determination for the onroad motor vehicle contribution of PM_{2.5}, nitrogen oxides (NO_x), and sulfur dioxide (SO₂) for the West Virginia portion of the Area for purposes of transportation conformity. EPA is also approving West Virginia's insignificance determination for transportation conformity. In addition, EPA is also

finding that the Area continues to attain the standard. This rulemaking action approving the 1997 annual PM_{2.5} NAAQS redesignation request, maintenance plan, comprehensive emissions inventory, and insignificance determination for transportation conformity for the West Virginia portion of the Area is based on EPA's determination that the Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date of publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2012-0368. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 8, 2012, the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), submitted a request to redesignate the West Virginia portion of the Wheeling Area nonattainment area to attainment for the 1997 annual PM_{2.5} NAAQS. The Wheeling Area is composed of Marshall and Ohio Counties in West Virginia and Belmont County in Ohio. On December 11, 2012 (77 FR 73575), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. Pursuant to sections 107(d)(3)(E) and 175A of the CAA, the NPR proposed approval of West Virginia's redesignation request, a SIP revision that establishes a maintenance plan for the West Virginia portion of the Area that provides for continued attainment of the 1997 annual PM_{2.5} NAAQS for at least 10 years after redesignation, a comprehensive emissions inventory for PM_{2.5}, NO_x and SO₂, and the insignificance determination for the onroad motor vehicle contribution of PM_{2.5}, NO_x and SO₂ for transportation conformity purposes for the West Virginia portion of the Area.

On July 24, 2013 (78 FR 44487), EPA published a supplemental NPR that revised and expanded the basis for proposing approval of West Virginia's request in light of developments since EPA issued its initial proposal on December 11, 2012. Principally, the supplemental NPR addressed the effects of the decision of the D.C. Circuit Court's January 4, 2013 decision to remand to EPA two final rules implementing the PM_{2.5} NAAQS. In the supplemental NPR, EPA proposed to proceed with the approval of the request to designate the Wheeling Area to attainment for the 1997 annual PM_{2.5} NAAQS and the associated maintenance plan. On June 24, 2013, WVDEP supplemented its March 8, 2012 SIP submittal with the 2008 ammonia and volatile organic

compound (VOC) emissions inventory which EPA proposed to approve in the supplemental NPR, in conjunction with the PM_{2.5}, NO_x and SO₂ emissions inventory that EPA previously proposed to approve, as meeting the comprehensive emissions inventory requirements of section 172(c)(3) of the CAA. *See* December 11, 2012 (77 FR 73575) and July 24, 2013 (78 FR 44487). In addition, EPA also proposed to approve the insignificance determination for the onroad motor vehicle contribution of PM_{2.5}, NO_x and SO₂ for transportation conformity purposes for the West Virginia portion of the Area.

Other specific details of West Virginia's redesignation request, the associated maintenance plan SIP revision, the comprehensive emissions inventory, and insignificance determination, and the rationales for EPA's proposed actions are explained in both the NPR and the supplemental NPR and will not be restated here. No public comments were received on either of the NPRs.

II. Final Action

EPA is approving the redesignation request, the maintenance plan, the comprehensive emissions inventory, and the insignificance determination for transportation conformity for the West Virginia portion of the Area because the requirements for approval have been satisfied. EPA has evaluated West Virginia's redesignation request, and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Approval of this redesignation request will change the designation of the West Virginia portion of the Area from nonattainment to attainment for the 1997 annual PM_{2.5} NAAQS. EPA is also approving the associated maintenance plan for the West Virginia portion of the Area as a revision to the West Virginia SIP, because it meets the requirements of section 175A of the CAA. In addition, EPA is also

approving the comprehensive emissions inventory as a revision to the West Virginia SIP because it meets the requirements of section 172(c)(3) of the CAA. Furthermore, EPA is approving the transportation conformity insignificance determination submitted by West Virginia for this Area in conjunction with its redesignation request.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. A delayed effective date is unnecessary due to the nature of a redesignation to attainment, which eliminates CAA obligations that would otherwise apply. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule “grants or recognizes an exemption or relieves a restriction,” and section 553(d)(3), which allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today’s rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today’s rule relieves West Virginia of the obligation to comply with nonattainment-related planning requirements for this PM_{2.5} Area pursuant to Part D of the CAA. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for this action to become effective on the date of publication of this notice.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the redesignation request, the maintenance plan, the comprehensive emissions inventory and transportation conformity insignificance determination for the West Virginia portion of the Wheeling Area may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas

Authority: 42 U.S.C. 7401 et seq.

Dated: September 13, 2013.

W. C. Early,
Acting Regional Administrator,
Region III.

40 CFR parts 52 and 81 are amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart XX– West Virginia

2. In § 52.2520, the table in paragraph (e) is amended by adding an entry for the 1997 Annual PM_{2.5} Maintenance Plan for Wheeling, WV-OH Area at the end of the table to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) ***

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
1997 Annual PM _{2.5} Maintenance Plan for the Wheeling WV-OH Area	Marshall and Ohio Counties	3/8/12, 6/24/13	<u>[Insert Federal Register publication date],</u> <u>[Insert page number where the document begins]</u>	See §52.2526(i) and §52.2531(f)

3. Section 52.2526 is amended by adding paragraph (i) to read as follows:

§ 52.2526 Control strategy: Particulate matter.

* * * * *

(i) EPA approves the maintenance plan for the West Virginia portion of the Wheeling, WV-OH 1997 PM_{2.5} Nonattainment Area (Marshall and Ohio Counties). The maintenance plan establishes a determination of insignificance for PM_{2.5}, NO_x and SO₂ for transportation conformity purposes.

4. Section 52.2531 is amended by adding paragraph (f) to read as follows:

§ 52.2531 Base year emissions inventory.

* * * * *

(f) EPA approves as a revision to the West Virginia State Implementation Plan the comprehensive emissions inventory for the Wheeling, WV-OH fine particulate matter (PM_{2.5}) nonattainment area submitted by the West Virginia Department of Environmental Protection on March 8, 2012 and June 24, 2013. The emissions inventory includes emissions estimates that cover the general source categories of point sources, nonroad mobile sources, area sources, onroad mobile sources and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_x), volatile organic compounds (VOC), PM_{2.5}, ammonia (NH₃), and sulfur dioxide (SO₂).

PART 81 - DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

5. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

6. In §81.349, the table for West Virginia – PM_{2.5} (Annual NAAQS) is amended by revising the entry for the Wheeling, WV-OH Area to read as follows:

§ 81.349 **West Virginia.**

* * * * *

West Virginia –PM_{2.5} (Annual NAAQS)

Designated area	Designation ^a	
	Date ¹	Type
* * * * *	* *	*
Wheeling, WV-OH		
Marshall County	<u>[Insert Federal Register publication date]</u>	Attainment
Ohio County	<u>[Insert Federal Register publication date]</u>	Attainment
* * * * *	* *	*

^a Includes Indian County located in each county or area, except as otherwise specified.

¹ This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

[FR Doc. 2013-23691 Filed 09/27/2013 at 8:45 am; Publication Date: 09/30/2013]